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WENDEROTH, LIND & PONACK, LLP
2033 K STREET, N.W.
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OFFICE OF PETITIONS

In re Application of
Hiroyuki Yamaoka
Application No. 10/751,450
Filed: January 6, 2004
Attorney Docket Number:
2004_0007

ON PETITION

This is a decision on the Petition Re Drawings, filed May 24, 2004, requesting the above-identified application be accorded a filing date of January 6, 2004.

The petition is granted.

The application was filed on January 6, 2004. On April 9, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and avers that drawings are not required [under 35 U.S.C. §113] because they are not necessary for the understanding or for practice of the invention as claimed.

A review of the file reveals that Petitioner is correct, the specification contains process claims (i.e. claims 7-9). As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or
a provisional application having at least some disclosure,

directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains process claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.


In this instance, a petition is not necessary to add the drawing figures. Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a).

In view of the above, the Notice mailed April 9, 2004, was mailed in error and is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination; Customer Corrections, for further processing, with the filing date of January 6, 2004, and an indication that no drawings were required or present on filing.

A refund of the petition fee has been scheduled as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.


Derek L. Woods

Petitions Attorney
Office of Petitions